

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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PATRICIA IRENE SPARKS,

Plaintiff,

V.

BCI COCA-COLA BOTTLING COMPANY
OF LOS ANGELES, *et al.*,

Defendants.

Case No. 2:13-cv-1468-RFB-VCF

ORDER ACCEPTING REPORT AND RECOMMENDATION

I. INTRODUCTION

This is a personal-injury case. Plaintiff Patricia Sparks sues BCI Coca-Cola Bottling Company of Los Angeles and Coca-Cola Refreshments USA, Inc. (“Coca-Cola”), alleging that while she was shopping at a Walmart Super Center, a Coca-Cola employee negligently struck her with a motorized pallet jack causing her injuries. Before the Court is Coca-Cola’s Motion to Reconsider and Objection to an Order and Report and Recommendation of the Honorable V. Cam Ferenbach, United States Magistrate Judge, issued on March 17, 2015. ECF No. 32. In his Order, Judge Ferenbach granted Sparks’ Motion to Withdraw or Amend her responses to requests for admission and recommended that Coca-Cola’s Motion for Summary Judgment be denied. After review, the Court denies Coca-Cola’s Motion to Reconsider and accepts and adopts Judge Ferenbach’s Recommendation.

II. BACKGROUND

Neither party objected to Judge Ferenbach's summary of the background facts, and so the court incorporates and adopts, without restating, that background section here. See Order and Report & Recommendation 1-2, ECF No. 32.

1 **III. LEGAL STANDARD**

2 A district judge may reconsider any pretrial order of a magistrate judge if it is “clearly
 3 erroneous or contrary to law.” 28 U.S.C. § 636(b)(1)(A). “A finding is clearly erroneous when[,]
 4 although there is evidence to support it, the reviewing body on the entire evidence is left with the
 5 definite and firm conviction that a mistake has been committed.” *Id.* at 622. The district judge
 6 “may affirm, reverse, or modify” the ruling made by the magistrate judge, or remand the ruling to
 7 the magistrate judge with instructions. D. Nev. R. IB 3-2.

8 A district court “may accept, reject, or modify, in whole or in part, the findings or
 9 recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). A party may file specific
 10 written objections to the findings and recommendations of a magistrate judge. *Id.* § 636(b)(1); D.
 11 Nev. R. IB 3-2(a). When written objections have been filed, the district court is required to “make
 12 a de novo determination of those portions of the report or specified proposed findings or
 13 recommendations to which objection is made.” 28 U.S.C. § 636(b)(1).

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15 **IV. DISCUSSION**

16 Coca-Cola filed a timely objection on April 3, 2015. ECF No. 33. Coca-Cola’s objection
 17 is styled as a motion to “object” and “to reconsider.” The Court has reviewed Judge Ferenbach’s
 18 order granting Sparks’ motion to withdraw or amend her responses to requests for admissions
 19 under the clearly erroneous standard. The Court has further reviewed Judge Ferenbach’s
 20 recommendation to deny Coca-Cola’s motion for summary judgment *de novo*.

21

22 **A. Motion to Reconsider**

23 After review, the Court agrees with Judge Ferenbach’s decision and finds that his order is
 24 not clearly erroneous or contrary to law. Rule 36(b) provides that “the court *may* permit withdrawal
 25 or amendment” of matters admitted under that Rule. Fed. R. Civ. P. 36(b) (emphasis added).
 26 Withdrawal is permissive, not mandatory. Conlon v. United States, 474 F.3d 616, 621 (9th Cir.
 27 2007). Rule 36(b) permits the court to exercise its discretion to grant relief from an admission
 28 when (1) “it would promote the presentation of the merits of the action,” and (2) “the court is not

1 persuaded that [withdrawal or amendment] would prejudice the requesting party in maintaining or
2 defending the action on its merits.” Fed. R. Civ. P. 36(b); Conlon, 474 F.3d 616 at 621. Judge
3 Ferenbach concluded that Coca-Cola failed to demonstrate how it has been prejudiced in a way
4 that “relates to the difficulty [it] may face in proving its case.” Conlon, 474 F.3d at 622. Judge
5 Ferenbach’s decision to grant Sparks’ Motion to Withdraw or Amend her responses to requests for
6 admissions relies on well-established Ninth Circuit law, and the Court agrees with his analysis.
7 Therefore, Coca-Cola’s Motion to Reconsider is denied.

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9 **B. Objection to Judge Ferenbach’s Recommendation**

10 The Court has reviewed *de novo* the record in this case and concurs with Judge Ferenbach’s
11 recommendation that Coca-Cola’s Motion for Summary Judgment be denied because its only basis
12 for seeking summary judgment rests on Sparks’ deemed admissions. Because the Court is
13 affirming Judge Ferenbach’s Order granting Sparks’ Motion to Withdraw or Amend her responses
14 to requests for admissions, Coca-Cola cannot rely on her failure to respond as a basis for summary
15 judgment and therefore cannot prevail on its motion. The Court therefore adopts the Report and
16 Recommendation in full and denies Coca-Cola’s Motion for Summary Judgment.

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V. CONCLUSION

For the reasons given above,

IT IS ORDERED that Defendants BCI Coca-Cola Bottling Company of Los Angeles and Coca-Cola Refreshments USA, Inc.’s Motion to Reconsider (ECF No. 33) is DENIED.

IT IS FURTHER ORDERED that the Findings and Recommendation (ECF No. 32) is ACCEPTED and ADOPTED in full.

IT IS FURTHER ORDERED that Defendants' Motion for Summary Judgment (ECF No. 24) is DENIED.

IT IS FURTHER ORDERED that Defendants' Objection to the Entry of the Magistrate Judge's Minute Order regarding discovery (ECF No. 37) is DENIED.

DATED: September 27, 2015.

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RICHARD F. BOULWARE, II
United States District Judge